ACTIONS ON FOREIGN JUDGMENTS.

MUNSON PRIZE THESIS.

The term "foreign judgment," as used in the books, applies indiscriminately to judgments rendered in a foreign country and those rendered in sister States of the Union, and it is not unusual for text-writers to treat the two classes conjointly. The limits of this paper, however, force us to confine our discussion to those judgments which are foreign in the stricter sense. There is an obvious and fundamental distinction between these and the judgments of a sister State, both in respect of their inherent force and of the basis underlying it, which, in the case of the former, is comity, absolute reciprocity, or individual obligation, and, in the case of the latter, a provision in the federal Constitution and congressional enactments in pursuance thereof. Before the Revolution our various colonies, though in many respects so intimately connected, were by the common law deemed foreign to each other, and the courts of one applied to the judgments rendered by the tribunals of the others, the rule then prevailing in England regarding foreign judgments, holding them to be but *prima facie* evidence of debt and not to possess the dignity of a record. Clearly, among a people so closely knit by ties of blood and common interest, such a doctrine must be fraught with inconvenience, and prove a great impediment to commercial intercourse. The logical outcome was a number of statutes, the earliest passed in Massachusetts in 1773, providing that the judgments of the courts of adjacent colonies should be unimpeachable on their merits.[1] When, by the Articles of Confederation, the colonies were united in one nation of States, it was provided:[2] "Full faith and credit shall be given, in each of these States, to the records, acts and judicial proceedings of the courts and magistrates of every other State"; and later, by our present Constitution,[3] it was enacted: "Full faith and credit shall be given in each State to the public acts, records and judi-

[1] Hilton *v.* Guyot, 159 U. S. 113; Bigelow on Estoppel (5th Ed.) p. 266.

[2] Art. 4, Sec. 3. [3] Art. 4, Sec. 1.

cial proceedings of every other State, and Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof." In pursuance of the power thus granted the first Congress under the Constitution, sitting in 1790, after prescribing the manner of authentication, enacted that "the said records and judicial proceedings, authenticated as aforesaid, shall have such faith and credit given to them in every court of the United States as they have by law or usage in the courts of the State from whence the said records are or shall be taken."[4] The supplementary act of March, 27, 1804, reënacting these provisions and adding further directions concerning attestation, is made to apply to "the Territories of the United States and the countries subject to the jurisdiction of the United States."

By these constitutional and legislative provisions, all considerations of comity, reciprocity, utility and personal obligation, which render the questions involving foreign judgments so difficult and uncertain, are swept away, and in their place is erected the inflexible and determinate "supreme law of the land." The courts have decided that the record of a judgment rendered by a duly constituted tribunal of a sister State is a *record* in the true sense of the word, to an action on which *nul tiel record* alone is the appropriate general issue;[5] that such a judgment merges the original cause of action,[6] and that it has all the force as evidence or as an estoppel that it would have where given. Even the plea of fraud is not generally available,[7] unless, perhaps, when permitted at home,[8] or when the suit is in equity to restrain proceedings at law.[9] But except so far as they are by the Constitution united for national purposes, the several States of the Union still stand toward one another in the relationship of independent sovereignties; so that, "notwithstanding that provision [Const., Art. 4, Sec. 1] and the statutes passed to enforce it, the jurisdiction of a State court whose judgment is brought

---

[4] Rev. Stat. U. S., Sec. 905.

[5] Mills *v.* Duryee, 7 Cranch, (U. S.) 481.

[6] Bank of U. S. *v.* Merchants Bank, 7 Gill. 415.

[7] Christmas *v.* Russell, 5 Wall. (U. S.) 290.

[8] Hampton *v.* McConnell, 3 Wheat. (U. S.) 234; Hanley *v.* Donoghue, 116 U. S. 1, 4; Burras *v.* Bidwell, 3 Woods (U. S.) 5.

[9] Pearce *v.* Olney, 20 Conn. 544. Under the modern code practice, such equitable defenses may be interposed in an action at law (Amer. and Eng. Enc. of Law, Tit. Judgments, p. 149 f.).

in question in another State is always open to inquiry. In that respect, every State court is to be regarded as a foreign court."[10]

I.

1. In order that the record of a foreign judgment may be received as competent evidence in our courts, it must be duly authenticated. This is a technical matter into which we shall not enter any further than to say, that it is usual and proper to introduce a copy exemplified under the great seal of the State, or under the seal of the foreign court, in which case, the seal itself must be proved to be genuine by evidence *aliunde*, or the copy may be proved under oath by one who has compared it with the original. The seals of courts of Admiralty, however, will be judicially noticed, they "being the courts of the civilized world."[11] And it is said that the "exemplification will be deemed *prima facie* correct."[12]

Furthermore, though there will be a general presumption in its favor, the record must be fair on its face, and free from uncertainty as to what it professes to decide. Ambiguities will not be removed by argument and inference.[13] In the case first cited (involving a decree of forfeiture rendered by a foreign prize-court), Justice Story said: "If the sentence be ambiguous or indeterminate as to the facts on which it proceeds, or as to the direct grounds of condemnation, the sentence ought not to be held conclusive, or the courts of other countries put to the task of picking out the threads of argument or of reasoning or recital in order to weave them together so as to give force or consistency or validity to the sentence." A patent ambiguity on the face of the record would be fatal,[13a] but where the record is silent, parol evidence is competent to show what points were passed upon,[14] as may also be shown the practice and procedure of the foreign court.[15] Moreover, it ought, as matter of precaution, if not of strict regularity, to appear that the foreign court

[10] Fisher *v.* Fielding, 67 Conn. 91-105; Hatch *v.* Spofford, 22 Conn. 485; Thompson *v.* Whitman, 18 Wall. (U. S.) 457, 461; Grover & Baker Mach. Co. *v.* Radcliffe, 137 U. S. 287, 294, 298.

[11] I. Greenl. Evid., Secs. 5, 514; Wharton Conflict of Laws, Sec. 789 *et seq.*; Story Conflict of Laws, Sec. 641.

[12] Woodbridge *v.* Austin, 2 Tyler (Vt.) 364, 366.

[13] Bigelow on Estoppel (5th Ed.), p. 249; Bradstreet *v.* Ins. Co., 3 Sumn. (U. S.) 600; Robinson v. Jones, 8 Mass. 536.

[13a] Bigelow on Estoppel (5th Ed.) 250.

[14] Merchants Bank *v.* Schulenburg, 48 Mich. 102.

[15] Fisher *v.* Fielding, 67 Conn. 91.

had duly acquired jurisdiction, and that regular proceedings were had; for there are cases going so far as to hold that, if it be not shown on the face of the record that all the necessary steps to this end have been complied with, it will not be received even as *prima facie* evidence.[16] It is said that "when the record of a foreign judgment *in rem* is silent in regard to the matters which constitute jurisdiction, jurisdiction will not be presumed,"[17] and it has been held that in order to bind strangers, the grounds of a decision of condemnation in a court of Admiralty must be stated in the record itself.[18]

Finally, we should say, that if it be clear by the record that any of the several essentials to the validity of the foreign judgment or decree hereinafter to be stated do not exist, it will be valueless as evidence and will be treated as a nullity.

2. A judgment or decree rendered in a foreign land has never been awarded the high character of a record. Hence there is no extinguishment or merger[19] of the original cause of action, and the successful plaintiff who desires to reassert his claim in another jurisdiction has the option of relying for his evidence on the record of the former adjudication, or of disregarding that and entering into the merits *de novo*. This has always been the rule in England, and was several times declared by the courts of Texas prior to its annexation to the United States.[20] It is also so held throughout the Union, with the single exception that in Louisiana, under the Code, the original cause of action is regarded as merged in the foreign judgment.[21] This absence of merger is due to the fact that the plaintiff has not by his foreign judgment acquired any higher remedy in our own courts than he had before. The right to issue execution, in the case of domestic judgments, would render

---

[16] Sawyer *v.* Ins. Co., 12 Mass. 291; Bradstreet *v.* Ins. Co.. 3 Sumn. (U. S.) 600; Bigelow on Estoppel (5th Ed.) 251.

[17] Bigelow on Estoppel (5th Ed.) 251, citing Com. v. Blood., 97 Mass. 538, and the Griefswald, Swabey 430. Nevertheless, it must be added that the tendency of modern decisions is to treat duly exemplified foreign judgments, bearing nothing to suggest distrust, as being entitled to the *prima facie* presumption that they were given by a duly constituted tribunal acting within its lawful authority.

[18] Dalgleish *v.* Hogson, 7 Bing. 495, 504.

[19] Smith *v.* Nicholls, 5 Bing. N. C. 208; Bank of Australasia *v.* Nias, 16 Q. B. 717.

[20] Frazier *v.* Moore, 11 Texas 755.

[21] N. Y., L. E. & W. R. Co. *v.* McHenry, 17 Fed. Rep. 414; Jones *v.* Jamison, 15 La. Ann. 35.

a second suit on the original demand wholly superfluous and, hence, indicative of bad faith and contrary to public policy; but no such remedy exists in favor of foreign judgments, for here the party is compelled to have recourse to his action, in which the former judgment can, in any event, figure only as evidence.[22]

But if the plaintiff elect so to declare on the merits again, he may nevertheless employ the record of the former judgment as evidence of the strength and extent of his claim, without making any formal allegation in regard to it.[23]

The form of action on the judgment may be either debt, for the liquidated sum adjudged to be due, or *assumpsit*, on the implied promise to satisfy the obligation raised by such adjudication.[24] It is unnecessary to allege in the declaration that the court had jurisdiction, or that it was regularly constituted, or that the proceedings were properly conducted, for all this (provided the record itself be regular), will be presumed, until the contrary is established.[25] And where, in accordance with the form provided in one of our modern Practice Acts, the complainant merely alleges that the judgment was "duly" recovered, this implies that the suit was conducted in due course of law, "which necessarily involves reasonable notice to the defendant of the institution and nature of the action, given (unless this be waived), if he be a non-resident, by personal service within the jurisdiction, and a fair opportunity to be heard before a tribunal of competent jurisdiction," and also that a trial or hearing was had.[26]

3. Having adverted to the main points of procedure which must govern one who seeks to enforce in the courts of one country a demand already passed upon by the courts of another, we come now to consider the defenses by which such an action may be met.

And first, if the plaintiff who has recovered in a foreign court decide to sue a second time on his original cause of action, he waives all advantage of estoppel that might have accrued to him from the prior adjudication, and opens the door for the defend-

---

[22] Smith *v.* Nicholls, 5 Bing. N. C. 208.

[23] N. Y., L. E. & W. R. Co. *v.* McHenry, 17 Fed. Rep. 414.

[24] Henderson *v.* Henderson, 6 Q. B. 288; Grant *v.* Eastern L. R., 13 Q. B. Div. 302; Mellin *v.* Horlick, 31 Fed. Rep. 865.

[25] Gunn *v.* Peakes, 36 Minn. 177; Snell *v.* Faussatt, 1 Wash. C. C. (U. S.) 271; Robertson *v.* Struth, 5 Q. B. 941; Henderson *v.* Henderson, 6 Id. 288; Cowan *v.* Braidwood, 1 M. & Cr. 882, 892-895; 2 Wharton on Evid., Sec. 804 and cases cited.

[26] Fisher *v.* Fielding, 67 Conn. 91.

ant to contest the merits anew.[27] There being no merger, the foreign judgment cannot of course in such case be set up as a bar, as could be done in the case of a domestic judgment,[28] but it would seem that the record may be exhibited as marking the limit of the second recovery,[29] and a plea of judgment recovered and satisfaction thereof will be a good defense to the action.[30] But the pendency in a foreign court of another action for the same cause will not prevent an action here,[31] for that circumstance is not available for a defense even as between our sister States.

But if, in such case, the foreign judgment was in favor of the defendant, he is entitled to plead it in bar, and, if a final adjudication of a competent court having jurisdiction in the cause and not misled by fraud, it will serve as a complete *exceptio rei judicatæ* in his favor.[32] In pleading such a judgment, however, by way of justification or estoppel, it seems that the allegations are governed by a far more stringent rule than that obtaining in respect of declarations, and that it must be made clearly to appear, by express averments, that there existed all matters necessary to confer jurisdiction upon the foreign court, and that

---

[27] Wharton on Evid., Sec. 805.

[28] Wood *v.* Gamble, 11 Cush. (Mass.) 8.

[29] Smith *v.* Nicholls, 5 Bing. N. C. 208; dictum of Tindal, C. J. See also The Propeller East, 9 Benedict 76.

[30] Barber *v.* Lamb, 29 L. J., C. P. 234.

[31] Cox *v.* Mitchell, 7 C. B., N. S. 55; Russell *v.* Field, Stewart's Can. Rep. 558.

[32] Phillips v. Hunter, 2 H. Bl. 402, 410; Ricado *v.* Garcias, 12 Cl. & Fin. 368; Bigelow on Estop. (5th Ed.) 313. The reasonableness of this distinction which awards to a judgment for the defendant the force of an estoppel, but none to a judgment the other way, has been doubted. It is thus defended by a well-known writer: "The distinction, bearing in mind the fact that the doctrine of merger has no application, we conceive to be this: Any party may waive an advantage in his own favor, provided he does not thereby interfere with another's rights. The plaintiff waives such an advantage when he elects to bring a fresh suit upon the original cause of action, and this without injury to the rights of the defendant. He risks losing his case without the power, it would seem, of proving a larger claim than the amount for which the former judgment was rendered. The reason why he could prove no more than the sum recovered in the foreign suit, is that this would be to discredit the foreign judgment upon the merits; and this could not be done against the objection of the defendant, as we have seen. It is quite clear that though the plaintiff waives his rights, he does not endanger those of the defendant." Bigelow on Estop., p. 313. It seems doubtful how far this rule would be affected by the doctrine of reciprocity recently enunciated by the Supreme Court in Hilton *v.* Guyot, 159 U. S. 113. See *infra*.

the judgment there was a final one upon the identical issue sought to be litigated anew.[33]

Inasmuch as the foreign judgment is not deemed to give rise to a record or specialty obligation, the appropriate general issue to an action founded upon it is *nil debet*, or *non assumpsit*, as the case may be, and never *nul tiel record*.[34]

4. The statute of limitations of the *forum* may be specially pleaded in bar,[35] inasmuch as that appertains to the remedy, but a stay of execution granted in the foreign courts will not impair the efficacy of the judgment when employed in litigation here, nor will the pendency of an appeal, even where, by the foreign law, it operates as such a stay; but the domestic court may, if requested, grant a corresponding stay to await the outcome of the proceedings abroad.[36]

5. We shall presently have occasion to discuss those matters which are essential to the validity of a foreign judgment. It would be a mere truism to state that the absence of these may be shown to nullify the force of the judgment in an action. If fraud be set up, the facts must be alleged with great particularity.[37] And where the jurisdiction of the foreign court is assailed, the pleading must be special, and must carefully negative every circumstance or state of facts by which jurisdiction might, by any possibility, have been rightfully entertained; otherwise it will be declared bad on demurrer.[38]

II.

Hitherto our attention has been directed to foreign judgments solely with regard to matters of procedure, except so far as the question of their force and validity is inseparably involved in that consideration. Such matters, touching the remedy alone, are to be regulated wholly by the *lex fori*.[39] But

[33] Taylor on Evid., Sec. 1548; Frayes *v.* Worms, 10 C. B. N. S. 148. But see the language of Earle, C. J., in Barber *v.* Lamb, 29 L. J. C. P. 234.

[34] Walker *v.* Witter, Doug. Rep. 1; Chitty Pl. 485; Bissel *v.* Briggs, 9 Mass. 462. In Bischoff *v.* Wethered, 9 Wall (U. S.) 812, the plea was *nul tiel record;* but this was unnoticed by the court, the decision proceeding upon another ground.

[35] Story Conf. of Laws, Sec, 582*a* (8th Ed.); Don *v.* Lippmann, 5 Cl. & Fin. 1, 19-21; McElmoyle *v.* Cohen, 13 Pet. (U. S.) 312.

[36] See Wharton Conf. of Laws, Sec. 805.

[37] Ritchie *v.* McMullen, 159 U. S. 235.

[38] Hill *v.* Mendenhall, 21 Wall. (U. S.) 453; 2 Taylor on Evid., Sec. 1540, and cases cited.

[39] Story Conf. of Laws, Sec. 556.

turning now to the effect of foreign judgments as adjudications upon the rights of individuals, we find ourselves entering into the province of private international law. It is not our design, however, to make any exhaustive examination of the decisions of foreign tribunals or the opinions of the publicists; we purpose to limit ourselves to a light sketch of what the law of foreign judgments is, as discovered and declared by the courts of this country and of England, and of the grounds upon which it professes to be based.

What, then, is the force of a judgment recovered in a foreign land? And how may it be attacked?

1. It may be stated generally that the courts of England and of this country will not lend their aid to enforce a judgment, whether *in rem* or *in personam*, that was brought about through treachery and fraud. To hold a contrary view would be to force Justice to prostitute herself to the vile purposes of chicanery and corruption. The wise maxim, *Interest reipublicœ ut sit finis litium*, has its limitations, and they are reached when to apply it would be to turn courts into tools of covin, and accomplish rank injustice. So we find the books full of *dicta* to the effect that foreign judgments may be impeached for fraud.[40] Yet it is not so clear of what sort this fraud must be. It has never been doubted that any deception practiced *dehors* the proceedings themselves, by which a party was defrauded of his natural right to a full and fair trial of the merits of the controversy, would render the judgment or sentence a nullity. Examples of such fraud are, corruption of the presiding judge, or bribery of witnesses to disobey a subpœna, or entering judgment through treachery of counsel on the opposite side[41] or through collusion with parties joined with the one injured, or taking judgment by

---

[40] Ochsenbein *v.* Papelier, L. R. 8 Ch. App. 695, 698; Messina *v.* Petrochino, L. R. 4 P. C. 144; Bank *v.* Nias, 16 Q. B. 717, 735; Price *v.* Dewhurst, 8 Sim. 279; Hilton *v.* Guyot, 159 U. S. 113; Ritchie *v.* McMullen, Idem. 235; Fisher *v.* Fielding, 67 Conn. 91; 2 Taylor on Evid., Sec. 1533; Bigelow on Estop., (5th Ed.) 254; Black on Judgments, Sec. 844; Story on Conflict of Laws, Secs. 592, 597, 608; 2 Wharton on Evid., Sec. 803. In an early Connecticut case, however, involving a sentence of condemnation, passed by a foreign court of Admiralty, the court said: "The court are of opinion that such a sentence cannot thus be called in question, but must remain in full force until avoided in some regular mode, in the country where it passed." Stewart *v.* Warner, 1 Day (Conn. 1803) 142, 148. But it did not appear that the fraud there set np had affected in any way the decision of the foreign court.

[41] United States *v.* Flint, U. S. C. C. Cal. 1876. See Hunt *v.* Blackburn, 128 U. S. 464, 470.

default in breach of an agreement to discontinue suit.[42] In such cases, there would be no real cause, no real issue, trial or judgment;[43] but the whole of the proceedings, from start to culmination, would be an utter sham—a mere parody on justice. To reinvestigate this species of fraud is clearly not "to show that the court was mistaken," but to show "that they were *misled*," within the rule laid down in the celebrated opinion of Chief-Justice DeGrey, in the Duchess of Kingston's case.[44]

But of late years there have been in England several express decisions on this subject which seem greatly to extend the doctrine previously advocated by the courts, holding that foreign judgments (and, indeed, it would seem, domestic judgments), may be impeached, if obtained by suppression of evidence and by fraudulent testimony, even though that very matter had been passed upon by the foreign court.[45] In the case of Abouloff *v.* Oppenheimer, first cited, (which was a suit on a judgment rendered by a Russian court in an action analogous to our replevin), Lord Justice Brett said:

"I will assume that in the suit in the Russian court the plaintiff's fraud was alleged by the defendants and that they gave evidence in support of the charge. I will assume even that the defendants gave the very same evidence that they propose to adduce in this action; nevertheless, the defendants will not be debarred at the trial of this action from making the same charge of fraud and from adducing the same evidence in support of it. * * * It has been contended that the same issue ought not to be tried in an English court which was tried in the Russian courts; but I agree that the question whether the Russian courts were deceived never could be an issue in an action tried before them."

In the case of Fisher *v.* Fielding, recently decided by the Supreme Court of Connecticut, this English doctrine is lucidly explained by Judge Baldwin, in the following language:

"In such case [claim of fraud] the merits may be re-tried, not to show that the foreign court came to a wrong conclusion, but that it was fraudulently misled into coming to a wrong conclu-

---

[42] Ochsenbein *v.* Papelier, L. R. 8 Ch. App. 695; Pearce *v.* Olney, 20 Conn. 544; 1 Bigelow on Fraud, 88 n.

[43] See Fisher *v.* Fielding, 67 Conn. 91.

[44] 2 Smith L. C., 784, 794.

[45] Abouloff *v.* Oppenheimer (1882) L. R., 10 Q. B. Div. 295, 305, 308, followed and acted on in Vadala *v.* Lawes (1890) L. R., 25 Q. B. D. 310, and Crozat *v.* Brogdon (1894) 2 Q. B. 30.

sion. If the triers are convinced that the foreign judgment should have been rendered on the merits the other way, but still do not find that there was fraud, the defense fails."

These decisions, apparently, introduce a new and important principle into the doctrine of *res judicata* in England, not only in respect of foreign judgments, but in respect of domestic judgments as well. And they have not escaped severe criticism, both in this country and at home.[46] Assuming, for the sake of the argument, that the judgment of a competent foreign tribunal, having the requisite jurisdiction of the cause and of the parties, is to be regarded as conclusive on the merits, it would seem that the doctrine goes very far. Fraud is alleged in an action; evidence is brought forward in support of the allegation and against it; the issue thus raised is considered and passed upon by the court; we fail to perceive why such a decision is not upon the *merits* as fully as would be a decision concerning the validity of an instrument or the existence of a contract. If the court was competent to decide as to whether or not there was a contract, it would be equally competent to determine upon the existence of fraud. The distinction sought to be drawn appears, at first sight at least, to be subtle and metaphysical, rather than practical. In the case of Hilton *v.* Guyot,[47] the Supreme Court of the United States expressly abstained from passing an opinion concerning the correctness of this view, and it is difficult to see how they could uphold it consistently with the rule hitherto adhered to by that court in regard to domestic judgments.[48] In Vance *v.* Burbank, just cited, Mr. Chief-Justice Waite said:

"It has been settled that the fraud in respect to which relief will be granted in this class of cases must be such as has been practiced on the unsuccessful party, and prevented him from exhibiting his case fully to the department, so that it may properly be said that there has never been a decision in a real contest about the subject-matter of inquiry. False or forged documents even are not enough, if the disputed matter has actually been presented to or considered by the appropriate tribunal."

---

[46] See Van Fleet on Collateral Attack, Sec. 558; Bigelow on Estop. (5th Ed.), 307; Pigott on Foreign Judgments (2d Ed.), 106 et seq.; 6 Law Quar. Rev., Eng. 460.

[47] 159 U. S. 113.

[48] United States *v.* Throckmorton, 98 U. S. 61, 64; Vance *v.* Burbank, 101 U. S. 514, 519; Steel *v.* Smelting Co., 106 U. S. 447, 453; Moffat *v.* United States, 112 U. S. 24, 32; Marshall *v.* Holmes, 141 U. S. 589; see also Green *v.* Green, 2 Gray (Mass.) 361; Ross *v.* Wood, 70 N. Y. 8.

According to this view, the test is whether the defense was, or could have been, put in issue at the former trial. If so, relief must be sought in a motion for a new trial, or in some other direct proceeding.

The case of Christmas *v.* Russell, [5 Wall (U. S.) 290] decides that fraud is no defense to an action at law on a judgment of a sister State, on the ground that it will not avail (at law) to impeach a domestic judgment. "It is, however, an equitable bar to its enforcement, just as it is in case of a domestic judgment. A judgment may be good at law, and yet equity deem it against conscience for the plaintiff to stand upon his legal rights. In such a case it is because the judgment is good at law that equitable relief is granted."[49]

We do not understand the case last quoted as approving the doctrine of Abouloff *v.* Oppenheimer, but, on the contrary, as repudiating it. Defendant had alleged that plaintiffs, well knowing that he was not personally liable for their claim, had nevertheless sued him personally to embarrass him and prevent a fair opportunity to defend, and had thereby sought an unfair advantage over him. The court, however, said:

"In Pearce *v.* Olney,[49a] these principles governed the decision: An injunction was granted on account of a fraud as to a matter which could not have been put in issue in the New York suit. An injunction was refused, on account of a fraud as to a matter which could have been put in issue in the New York suit. In the case at bar, by force of the Practice Act, equitable defenses could be pleaded by way of answer, but the defendant had no equity, because the question of his indebtedness to the plaintiffs, if it was to be contested, should have been put in issue before the English court," thus apparently applying the rule as to sister State judgments to a foreign judgment, and placing the question of fraud raised (if the allegation above referred to was considered as raising such a question), in the same category with other defenses on the "merits."

In England it seems that there is no distinction as respects fraud, between legal and equitable defenses. In a case precisely similar in its facts to Pearce *v.* Olney, the Chancellor said that the rule laid down in the Duchess of Kingston's case applied to courts of law and equity alike, and refused to restrain the action at law on the ground that the legal remedy was full

---

[49] Fisher *v.* Fielding 67 Conn. 91; 1 Bigelow on Fraud, 88 n.

[49a] 20 Conn. 544.

and adequate; and this decision was expressly declared to be uninfluenced by the new procedure permitting equitable defenses in legal actions.[49b]

2. If a foreign judgment is to possess any validity before our tribunals, it must have proceeded from a court having competent authority to sit as such, with jurisdiction of the cause, the subject-matter, and the parties.[50]

"In order that a judgment may be relied on as *res judicata*, it must have been one of a legally constituted court. It is of the very root of the idea of the right of the state to settle the disputes of individuals that the machinery employed for the purpose should itself be constituted according to law."[51]

This is true of our domestic judgments; *a fortiori* is it true of judgments given in a foreign land. A party, (at least if he be not the one who sought the foreign jurisdiction), is in no way estopped to dispute the authority of the foreign tribunal, and the validity of its organization and constitution.[52] We have seen, however, that if there be nothing suspicious upon the face of the record, a presumption will be indulged in favor of the legality of the tribunal, and the judgments of a *de facto* court would be respected, for the same reason that gives them validity at home.[53] But no presumption of due constitution will exist where it appears that the court is one of an extraordinary kind, or of special jurisdiction.

The question of jurisdiction, its acquisition and extent, is a subject far too broad and intricate to be discussed with any degree of plenitude in an essay so superficial as this must necessarily be. Viewed from our standpoint, it is a question which has received but an imperfect answer from the courts.

Jurisdiction may be acquired in one of four chief ways: First, by possession of the subject-matter or *res*, entitling the court to pronounce a judgment *in rem;* secondly, by service upon the party defendant within the jurisdiction of the court of actual notice of the action; thirdly, by his voluntary appearance

---

[49b] Ochsenbein *v.* Papelier, L. R. 8 Ch. App. 695.

[50] Rose *v.* Himley, 4 Cranch. (U. S.) 241, 269; Story on Confl. of Laws, Sec. 586; Bigelow on Estop., 251.

[51] Bigelow on Estop., 61.

[52] Black on Judgments, Sec. 821; Cucullu *v.* Ins. Co., 16 Am. Dec. 194; Snell *v.* Faussatt, 1 Wash. C. C. (U. S.) 271; The Griefswald, Swabey 430; The Flad Oyen, 1 Ch. Rob. 135; Elliott *v.* Piersol, 1 Pet. (U. S.) 328, 340.

[53] Black on Judgments, Sec. 821; Bank of North Amer. *v.* McCall, 4 Binn. (Pa.) 371.

therein, and fourthly, by constructive notice, through publication or otherwise.[54]

Over all property, whether real or personal, situate within its limits, the jurisdiction and dominion of a State, (except so far as restrictions are *ex comitate* allowed), are exclusive and absolute. It may prescribe the methods of its devolution and transfer, subject it to execution and forfeiture, or in any other manner operate upon it in accordance with its domestic laws, and the title thus conferred, or the changes thus effectuated, will be recognized and respected in every other jurisdiction.[55] On the other hand, any attempt on the part of one sovereignty to bind with its process or decrees property lying within the boundaries of another, would be absolutely nugatory and void. Therefore, a foreign judgment *in rem* or *quasi in rem*, whether it decide the title to a chattel, as in the case of the condemnation of a vessel in a court of admiralty, or the status of an individual, as in the case of a divorce, will be disregarded, if it appear that the subject-matter adjudicated upon was without the territorial limits of the foreign country or without the special jurisdiction of the tribunal that tried the cause.[56]

"The inconveniences of an opposite course would be innumerable, and would subject immovable [and, we add, movable] property to the most distressing conflicts arising from opposing titles, and compel every nation to administer almost all laws except its own in the ordinary administration of justice."[57]

But the court of chancery, provided it have jurisdiction of the parties, may act upon their consciences, (which is a euphemistic expression meaning threatened confinement in the common jail!), and thus indirectly, by a decree purely *in personam*, affect land lying in a foreign country, either to the extent of its entire disposition or with liens and burdens.[58] This has fre-

---

[54] "Considered from an international point of view, jurisdiction, to be rightfully exercised, must be founded either upon the person being within the territory, or upon the thing being within the territory; for otherwise there can be no sovereignty exerted, upon the known maxim. *Extra territoriam jus dicenti impune non paretur.* * * * On the other hand, no sovereignty can extend its process beyond its own territorial limits to subject either persons or property to its judicial decisions." Story on Confl. of Laws, Sec. 559.

[55] Idem, Secs. 550, 555, 557.

[56] Pennoyer *v.* Neff, 95 U. S. 714.

[57] Story Conf. of Laws, Sec. 555.

[58] Idem, Sec. 544.

quently been done in both England and America.[59] The doctrine, however, should be confined within narrow boundaries, and "must be strictly limited to those cases where the relief decreed can be entirely obtained through the parties' personal obedience; if it went beyond that, the assumption would be not only presumptuous but ineffectual."[60] And it may be matter of grave doubt how far such decrees would be respected by a court acting under a system of jurisprudence whose genius differed greatly from that of our own.[61]

Every sovereign nation, having the sole custody of the lives, liberty and property of all within its dominions, whether citizens or foreigners, may by its laws prescribe through what means their interests shall be brought before its courts for adjudication.[62] Dispensing with the personal notice, held so dear by the common law, its local policy may provide a purely constructive service, by publication or otherwise, which shall be deemed sufficient notice for all intents and purposes, and thus, without his day in court, and in utter ignorance of the fact that his rights are being assailed, a party may be forever precluded from disputing the subsequent proceedings, because the legislative will has said it shall be so. But this constructive process can never, as regards non-resident foreigners, confer jurisdiction for international purposes. Such proceedings, if not absolutely shocking and contrary to natural justice, can at least find no place in the common jurisprudence of the civilized world. It may then be laid down as a general principle of private international law, that no man, if he be not a citizen, or in some way owing allegiance to the State, will be held bound *in personam* by the judgment of a foreign tribunal in a suit whereof he had no personal notice served upon him, in the jurisdiction, unless he waived the same or voluntarily appeared in the action. This necessarily follows as a corollary from the axiomatic proposition heretofore stated, that within its own territorial limits the authority of every sovereign State is supreme. And so it has been expressly decided by the Supreme Court of the United

[59] Penn *v.* Lord Baltimore, 1 Ves. 444; Massie *v.* Watts, 6 Cranch. (U. S.) 148, 158; Muller *v.* Dows, 94 U. S. 444; Keyser *v.* Rice, 47 Md. 203.

[60] Westlake's Inter. Law, Art. 65; Story Conf. of Laws, Sec. 545; Wharton Conf. of Laws, Sec. 288, *et seq.*; Bispham's Eq., Sec. 366.

[61] Wharton Conf. of Laws, Secs. 288, 290, 809. That such a decree will be enforced as between England and Ireland, see Houlditch *v.* Donegal, 2 Cl. & F. 470.

[62] Story on Conf. of Laws, Sec. 541.

States and the Courts of England,[63] and, indeed, would seem self-evident on its face. The effect of such a judgment would be purely local.[64] The question, however, is complicated by other considerations. The courts of England have several times respected constructive service in cases where the party owed a general or qualified allegiance to the sovereignty wherein judgment was rendered against him, such allegiance being deemed to impose an obligation to conform to the determination of the court. Thus, in Douglas *v.* Forrest,[65] it was said by Lord Chief-Justice Best that "a natural-born subject of any country, quitting that country, but leaving property under the protection of its laws, even during his absence owes obedience to those laws, particularly where those laws enforce a moral obligation;" and, in Becquet *v.* MacCarthy,[66] Lord Tenterden went even farther and upheld a judgment rendered in the Island of Mauritius against a party who, though once resident there, had departed the jurisdiction before the action was begun, on the ground that process had been served on the Procurator-General who, by the law of the Island, was bound to take care of the interests of such absent party, and that it was to be presumed that the officer did his duty. These cases, however, have been criticized, (if not in effect overruled), in the more recent decisions of Don *v.* Lippman and Schibsby *v.* Westenholz;[67] and in the latter case the following conditions were suggested as conferring jurisdiction without personal notice. When the defendant was, at the time of the judgment, a citizen of the foreign country, or resident there and owing a temporary allegiance at the time the suit began, or (possibly) at the time the obligation was contracted, or where he had himself sought the foreign tribunal as plaintiff. The court expressly left open the question whether a party would be bound, who had been forced to come in and defend in order to protect his property, and very much doubted whether the mere existence of property in the foreign country would be sufficient basis of jurisdiction to warrant a judgment *in personam.*[68]

To what extent these suggestions would be adopted by our courts it is impossible to say in the absence of direct adjudica-

---

[63] Bischoff *v.* Wethered, 9 Wall. (U. S.) 812; Schibsby *v.* Westenholz, L. R., 6 Q. B. 155.

[64] Story Conf. of Laws, Sec. 546.

[65] 4 Bing., 686, 702.

[66] 2 B. & Ad. 951.

[67] 5 Cl. Fin. 21; L. R., 6 Q. B. 155.

[68] But see Voynet *v.* Barret, 54 L. J., Q. B. 521.

tion. It seems reasonable at least that a citizen should be held bound by any kind of service authorized by the laws of his country. But in Webster *v.* Reid [69] the court says:

"These suits were not a proceeding *in rem* against the land, but *in personam* against the owners of it. Whether they all resided within the territory or not does not appear, nor is it a matter of any importance. No person is required to answer in a suit on whom process has not been served or whose property has not been attached."

It is sometimes sought to bind a non-resident by an attachment of his property within the jurisdiction. Such proceedings, however, can operate only *in rem*, or *quasi in rem*, upon the property itself, and can confer no jurisdiction of the person which the courts of another sovereignty will respect.[70] Moreover, the "due process of law" of the Fourteenth Amendment requires that all personal judgments rendered in one of our States against non-resident citizens of another shall be preceded by personal service, or its equivalent.[71]

If, however, an individual voluntarily enter within the limits of a foreign sovereignty, he thereby submits himself to the jurisdiction of its courts, and it may be said that he agrees to abide the outcome of any action for damages that may be there instituted against him, and with notice of which he is there personally served. This is true even though his allegiance be of the most temporary character, as that of a mere transient sojourner in the country. The law on the subject has been so clearly laid down in a very recent decision of the Supreme Court of Connecticut that we may be pardoned for quoting from it somewhat at length. The case was one of a citizen of Connecticut temporarily stopping at a hotel in Birmingham while on a business trip in England. Process was served upon him just as he was about to return home. He disregarded it, and judgment went against

---

[69] 11 How. 437, 459. The case cited was one *in personam;* but, when the jurisdiction exercised is one *in rem*, or *quasi in rem*, property within the place of the forum may be subjected to judicial action by construction service of process authorized by statute. Arnot *v.* Griggs, 134 U. S. 316.

[70] Cooper *v.* Reynolds, 10 Wall. (U. S.) 308; Pennoyer *v.* Neff, 95 U. S. 714; The Mecca, 6 P. D. 106; Story on Conf. of Laws, Sec. 549.

[71] Pennoyer *v.* Neff, *supra;* Cooley on Const. Lim., 405. It seems to be taken for granted that our national and state constitutional provisions render substituted service in all cases—even in that of a citizen—ineffectual to bind personally. Cooley on Const. Lim., Sec. 403, *et seq.* But see an interesting and logical discussion in Beard *v.* Beard, 21 Ind. 321.

him in the English court by default. In a suit upon this judgment in Connecticut, the defendant set up a special plea to the jurisdiction of the foreign court, but it was held bad. Judge Baldwin said:

"The fact that the defendant was a foreigner, making but a brief stay in the country, and on the point of leaving it for his own, did not deprive the courts of England of all jurisdiction over him. The Roman maxim, *Actor sequitur forum rei*, if it has any force in English or American jurisprudence, operates as a permission, rather than a command. A man who is absent from his domicile can still be sued there; but he can also be sued wherever he is found, if personally served with legal process within the jurisdiction where the plaintiff seeks his remedy. The action must be brought, indeed, in a court to which the defendant is subject, and subject at the time of suit; but, unless protected by treaty stipulation or official privilege, he is subject to every court within reach of whose process he may enter. The Roman law allowed a non-resident to be sued where he had established a temporary seat of business, and, in some cases, where he had simply contracted a single obligation. The common law, so far as concerns the enforcement of a pecuniary liability, goes farther, and operates alike upon every private individual who may be found, however transiently, within the territory where it is enforced. * * * He [the defendant] put himself under the power of the court, the moment he entered the territory which was subject to its authority. Nor did he put himself under its power simply in the sense that it could issue process and render judgment against him, which would be of force within the limits of the territory. To that extent, its judgments might be valid, though rendered without any personal service, upon a simple attachment of goods, or by publication. But they would be mere expressions of the will of the sovereign, and impose no personal obligation which other sovereigns could recognize or enforce. Judgments rendered against a foreigner who is previously served when personally present stand on a ground wholly different. These, and these only, so far as actions for money damages are concerned, are entitled to full respect in the courts of other countries by the principles of international law. * * * The defendant accepted the forum, when he voluntarily placed himself on English soil, and so came under an implied obligation to respect such legal process as might be served upon him there, to the extent of satisfying any resulting judgment duly rendered for a pecuniary demand."[72]

[72] Fisher *v.* Fielding, 67 Conn. 91, 104, 108, 109.

But personal service without the jurisdiction can amount to nothing. And if the defendant be shown to have been decoyed into the jurisdiction for the purpose of being there served with process, it may be that a case of fraud is exhibited sufficient to render the whole proceeding void.[73] But an appearance solely for the purpose of safe-guarding property whether already in the hands of the court or liable to seizure on execution, will be considered as a voluntary one.[74]

3. Again, it is agreed that foreign judgments repugnant to natural justice are of no force whatever. And it would seem that the term "natural justice" may have reference to the substantive law of the foreign country,[75] though it would more often denote the method of procedure, and, in this sense. would be more or less merely synonymous with "due process of law"—an expression which implies a reasonable notice to the defendant and a chance to be heard before a competent and impartial tribunal.[76] The line which separates that which is from that which is not natural justice must needs be shadowy and indefinite, and to be determined only in each particular case, in the light of attendant circumstances, and of the general principles of private international law. In Bradstreet *v.* Neptune Insurance Company[76a] Mr. Justice Story said:

"It is a rule founded on the first principles of natural justice that a party shall have an opportunity to be heard in his defense before his property is condemned, and that charges on which the condemnation is sought shall be specific, determinate and clear. If a seizure is made and condemnation is passed without the allegation of any specific cause of forfeiture or offense, and without any public notice of the proceedings, so that the parties in interest have no opportunity of appearing and making a defense, the sentence is not so much a judicial sentence as an arbitrary sovereign edict. It has none of the elements of a judicial proceeding, and deserves not the respect of any foreign nation. * * * It may be binding upon the subjects of that particular nation, but, upon the eternal principle of justice, it ought to have no binding obligation upon the rights or property of the subjects of other

---

[73] See Black on Judgments, Sec. 909.

[74] Voynet *v.* Barret, 54 L. J., Q. B. 521; Hilton *v.* Guyot, 159 U. S. 113.

[75] Henderson *v.* Henderson, 6 Q. B. 288.

[76] See Price *v.* Dewhurst, 8 Sim. 279; Shaw *v.* Gould, L. R., 3 H. L. 55; Bradstreet *v.* Ins. Co., 3 Sumn. 600: Windsor *v.* McVeigh, 93 U. S. 274.

[76a] 3 Sumn. (U. S.) 600.

nations; for it tramples under foot all the doctrines of international law, and is but a solemn fraud, if it is clothed with all the forms of a judicial proceeding."

How far our courts would go in upholding judgments rendered by the tribunals of barbarous or semi-barbarous countries is an interesting speculation. An English court has held valid the title acquired by judicial sale of a British ship in the piratical state of Algiers.[77]

In this connection may be noticed judgments rendered abroad on summary proceedings in derogation of the common law, which our courts will not enforce.[78]

4. The local policy, penal or revenue laws and police regulations of another country, are not to be imported and effectuated here through the medium of a foreign judgment.

"Such decrees can have, and ought to have, no extra-territorial significance. They rest upon no principle of universal acceptation, like the obligation of contracts, or the protection of generally recognized private rights."[79]

5. Once more, no action can be based upon a foreign judgment of an interlocutory character, or, indeed, on any that has not the force of *res judicata* in the jurisdiction where rendered. In order that it may be enforced it must have been a final determination of the *rights of the parties.*

"The test of finality and conclusiveness of any judgment," said Lord Justice Lindley, "is to be found in the view taken of it by the tribunals of the country in which it was pronounced, and if a judgment leaves the rights of the parties uninvestigated and

---

[77] The Helena, 4 Ch. Rob. 3. Interesting opinion by Sir William Scott.

[78] Anderson *v.* Haddon, 33 Hun. (N. Y.) 435. In this case it is said that no foreign judgment will be held conclusive, even when the party charged appeared, if it is shown that the cause of action was one not known to the common law, and that the course of procedure did not furnish all the safeguards afforded by it; but in the case of Hilton *v.* Guyot, 159 U. S. 113, where it was urged that the defendant in the foreign action had been deprived of the right of cross-examination, and that various of the common law rules designed to exclude fraudulent and perjured testimony had not been observed, the court say: "It having been shown by the plaintiffs, and hardly denied by the defendants, that the practice followed and the method of examining witnesses were according to the laws of France, we are not prepared to hold that the fact that the procedure in these respects differed from that in our own courts is of itself a sufficient ground for impeaching the foreign judgment."

[79] De Brimont *v.* Penniman, 10 Blatch. (U. S.) 436; The Antelope, 10 Wheat. (U. S.) 66, 123; Ogden *v.* Folliot, 3 Ter. Rep. 726.

undetermined, and avowedly leaves their rights to be determined in some other proceeding, the judgment cannot be treated here as imposing an obligation which our tribunals ought to enforce."[80]

Of course the courts will never give greater effect to a foreign judgment than it would have at home.

And furthermore, a judgment *in personam*, to be enforced in an action, must be for a fixed sum of money, and never such that the obligation to obey it may depend upon the existence or non-existence of a particular state of circumstances. Our courts will never stultify themselves by taking cognizance of a case where the means of enforcing the obligation lie, or may lie, wholly beyond their control.[81]

6. Having considered the necessity of jurisdiction and absence of fraud, and certain other requirements affecting the validity of foreign judgments, we come now to the last, and perhaps the most important, of our inquiries: How far are they conclusive on the merits?

In treating of this interesting subject, it will be convenient to make a customary division of judgments, into those that are *in rem*, and those that are *in personam*.

The distinctive feature of judgments *in rem*, in our jurisprudence, (as distinguished from that of Rome), is that they are binding, not merely *inter partes*, but *inter omnes*, concluding all the world.[82]

Without entering upon a lengthy discussion of the topic, which would be foreign to our purpose, it may be said, generally, that the ground upon which this universal validity rests is, (1) that all persons are deemed to be parties to them; or (2) that the cause was tried between those who had the exclusive interest in the question involved.[83] Examples of cases coming within the first principle are decrees of courts of admiralty, in cases of prize,[84] bottomry, salvage, wages, collision,[85] or foreclosure of liens,[86] sales of wreck and derelict under municipal regulations,[87]

[80] Nouvion *v.* Freeman, L. R., 37 Ch. Div. 244, 255; Burnham *v.* Webster, 1 Woodb. & N. (U. S.) 172.

[81] Wharton Conf. of Laws, Sec. 804; De Brimont *v.* Penniman, 10 Blatch. (U. S.) 436.

[82] Bigelow on Estop. (5th Ed.), 45.

[83] Ibid, 45, 46, 224: Croudson *v.* Leonard, 4 Cranch, (U. S.) 434.

[84] Croudson *v.* Leonard, *supra;* Williams *v.* Armroyd, 7 Cranch, (U. S.) 423.

[85] The Propellor East, 9 Bened. 76; Harmer *v.* Bell, 7 Moore P. C. 267.

[86] Castrique *v.* Imrie, L. R., 4 H. L. 414.

[87] Grant *v.* McLachlin, 4 Johns. (N. Y.) 34.

and decrees of probate,[88] while within the latter principle come decrees confirming or dissolving marriage,[89] or establishing pedigree [90] or illegitimacy.[91]

Proceedings in attachment, replevin, and the like, are frequently spoken of as being *in rem;* but, in a strict sense, they are not. "They bind, at most, only the specific parties to the action, including of course their successors in right."[92] "Attachment is simply resorted to in order to take the place of notice or appearance, in other words, merely to give the court jurisdiction; it is a means, and not an end."[93]

It seems to be almost universally held in this country and in England, that the sentence of a foreign court of admiralty, having jurisdiction of the *res*, and in the absence of fraud, condemning a vessel as lawful prize, is conclusive, not only of the change of title, but of all the necessary facts upon which the decision proceeded.[94] The only exception appears to be in New York, where the sentence is held to be conclusive as to the title, but only *prima facie* evidence of the findings upon which it was based.[95] So, also, a sentence of acquittal fixes the fact that the property sought to be condemned is free from all liability to forfeiture.[96] And it makes no difference if an error of law be apparent on the face of the record.[97] But it is only in regard to matters essential to the decree that it is held binding,[98] and it will not

---

[88] Bigelow on Estop. (5th Ed.), 245.

[89] Bigelow on Estop., 243; Story on Conf. of Laws, Sec. 595.

[90] Ennis *v.* Smith, 14 How. (U. S.) 400.

[91] Blackburn *v.* Crawfords, 3 Wall. (U. S.) 175; Kearney *v.* Denn, 15 Idem. 51.

[92] Story on Conf. of Laws (8th Ed.), Sec, 592, note a.

[93] Bigelow on Estop. (5th Ed.), 49; Woodruff *v.* Taylor, 20 Vt. 65; The Bold Buccleugh, 7 Moore P. C. 267, 282.

[94] Black on Judg., Sec. 815; Bigelow on Estop. (5th Ed.), 221; Hughes *v.* Cornelius, 2 Show. 232; Bernadi *v.* Motteux, 2 Doug. 575; Croudson *v.* Leonard, 4 Cranch, (U. S.) 434; But see The Mary, 9 Cranch, (U. S.) 126, 145, and Brigham *v.* Fayerweather, 140 Mass. 411, 414.

[95] Vanderheuvel *v.* U. S. Ins. Co., 2 Johns. Cas. 451; Durant *v.* Abendroth, 97 N. Y. 132, 141.

[96] McGoun *v.* Ins. Co., 1 Story (U. S.) 157; The Bennett, 1 Dodson 175; Gelston *v.* Hoyt, 3 Wheat. (U. S.) 246.

[97] Williams *v.* Armroyd, 7 Cranch, (U. S.) 423; Castrique *v.* Imrie, L. R., 4 H. L. 414.

[98] Bernadi *v.* Motteux, 2 Doug. 574; Fitzsimmons *v.* Ins. Co., 4 Cranch, (U. S.) 185; Black on Judg., Sec. 817.

be regarded as conclusive, if the grounds of the decision be ambiguously stated, or do not clearly appear.[99]

This doctrine, that such sentences are conclusive as to the necessary findings of fact, frequently comes up in inquiries purely collateral to the judgment itself, especially in suits against marine insurance companies, where it becomes important to know whether the vessel has broken the warranty of neutrality. In such cases, a finding in a foreign decree of condemnation of breach of blockade, for instance, would be conclusive to absolve the insurers from liability.[100]

All other valid judgments *in rem* are binding on all the world as to what is directly adjudicated, but not, it seems, as to the facts on which the decision rests.[101] Thus, in the case of Ennis *v.* Smith,[102] which was an action by persons claiming to be heirs of General Kosciuszko against the administrator of his estate, the Supreme Court of the United States held that certain decrees of courts in Lithuania, establishing pedigree, were, as judgments *in rem*, evidence against all the world of the matters of pedigree determined.

Decrees of status generally, when not contrary to a nation's policy, ought to be recognized everywhere when the parties interested were *bona fide* domiciled in the country where they were rendered; on the ground that the foreign court had full jurisdiction over the person, and that the cause was tried between those who had the exclusive interest in the litigation.

To treat specifically of the various kinds of judgments *in rem* would be to transcend the scope of this essay. Before leaving the subject, however, it should be said that, were the courts of one country to disregard the judgments of the courts of another, operating *in rem* upon the persons and things within their rightful jurisdiction, not only would great confusion of private interests result, with a consequent injury to commercial relations, but such disregard might possibly give rise to international complications. The pronouncement of a judgment *in rem* is not merely a declaration of justice between individuals; it is also an exercise of sovereign power, which it is the duty of all other sovereignties to respect.

---

[99] Bradstreet *v.* Ins. Co., 3 Sum. (U. S.) 600.

[100] Croudson *v.* Leonard, 4 Cranch, (U. S.) 434; Cucullu *v.* La. Ins. Co., 16 Am. Dec. 199.

[101] See Bigelow on Estop. (5th Ed.), 47; Brigham *v.* Fayerweather, 140 Mass. 411.

[102] 14 How. (U. S.) 400.

At the time of the Declaration of Independence, it was the established doctrine of the English courts in regard to foreign and colonial judgments *in personam* that, when made the basis of an action for their enforcement, they were to be regarded only as *prima facie* evidence of debt, but that when interposed as a defense, they afforded a complete *exceptio rei judicatæ*.

"It is in one way only," said Chief Justice Eyre, "that the sentence or judgment of a court of a foreign State is examinable in our courts, and that is when the party who claims the benefit of it applies to our courts to enforce it. When it is thus voluntarily submitted to our jurisdiction we treat it, not as obligatory to the extent to which it would be obligatory, perhaps, in the country in which it was pronounced, nor as obligatory to the extent to which by our own law sentences and judgments are obligatory, not as conclusive, but as matter *in pais*, as consideration *prima facie* to raise a promise."[103]

Since that time, the tide of judicial opinion has turned the other way, and it is now firmly held that foreign judgments, though impeachable on other grounds, (which we have already imperfectly considered), are absolutely conclusive on the merits. It is true, that in the important and leading case of Bank of Australasia *v.* Nias,[104] it was a colonial judgment that was involved, and Lord Campbell there expressly based his decision upon the ground that the defendant might have appealed to the Privy Council, and thus have obtained a review, saying out of abundant caution, "how far it would be permitted to a defendant to impeach the competency or the integrity of a *foreign* court, from which there was no appeal, it is unnecessary here to inquire"; but in the later case of Scott *v.* Pilkington,[105] this point of distinction seems entirely to have escaped the court's attention. That was a case involving a judgment rendered in the State of New York, and the Chief-Justice said:

"It was not denied that, since the decision in the case of Bank of Australasia *v.* Nias, we were bound to hold that a judgment of a foreign court, having jurisdiction over the subject-matter, could not be questioned on the ground that the foreign court had mistaken their own law, or had come on the evidence to an erroneous conclusion as to the facts."

---

[103] Phillips *v.* Hunter (1795), 2 H. Bl. 402. It would lead us too far to attempt to trace the vacillating course of the English cases. They are exhaustively collated and reviewed in Hilton *v.* Guyot, 159 U. S. 113, and Bigelow on Estop. (5th Ed.) 256, *et seq.*

[104] 16 Q. B. 717, 734–737.

[105] 2 Best & S. 11.

Not only is this now the settled law of England, but the courts have gone further, and hold that such judgments may not be impeached even when the record clearly shows that the foreign tribunal came to an erroneous conclusion in regard to English law. This was decided in Godard *v.* Gray (1870).[106] In that case, however, it did not appear that the defendant had called the foreign court's attention to what the English law really was, and it is quite possible that, in accordance with the doctrine of a former decision,[107] a manifest and *perverse* disregard of the law of England would still be closely scrutinized.

Naturally enough in the early days, the courts of America were disposed to follow the rule then obtaining in the parent country, and the judgments of foreign lands and of sister colonies were treated as only *prima facie* evidence of debt, before the adoption of the Constitution, and even for some time afterward when those colonies had become States.[108] Thus in Buttrick *v.* Allen (1811),[109] which was an action of *assumpsit* on a judgment from Nova Scotia, the court said:

"There is no doubt that *assumpsit* lies upon a foreign judgment, but the judgment is no more than *prima facie* evidence, and the defendant has all the benefits he would be entitled to in an action upon the original cause."

There are many others of these early cases which express the same opinion, but they are all, or nearly all, decisions concerning the validity of sister State judgments rendered before that question had been settled by the Supreme Court of the United States, or *dicta* concerning the force of foreign judgments thrown out in the course of such decisions.

It would be tedious to enter upon an historical examination of our law in this connection. New York, Maine and Illinois have in recent times declared in favor of the present English doctrine,[110] and within the past year the question has been twice authoritatively pronounced upon from different points of view,

---

[106] L. R., 6 Q. B. 139; see also Castrique *v.* Imrie, L. R., 4 H. L. 414.

[107] Simpson *v.* Fogo (1860), 1 John. & H. 18.

[108] See Hilton *v.* Guyot, 159 U. S. 113; Bigelow on Estop. (5th Ed.), 264.

[109] 8 Mass. 273 (1811).

[110] Lazier *v.* Westcott, 26 N. Y. 146, 150. It should be remarked that the lengthy discussion in this case regarding the conclusiveness of foreign judgments appears to be entirely *obiter*, inasmuch as the only questions raised by the pleas were purely technical, touching the admissibility of the exemplification of the foreign record. Dunstan *v.* Higgins, 138 N. Y. 70, 74; Rankin *v.* Goddard, 54 Me. 28, 55 Me. 389; Baker *v.* Palmer, 83 Ill. 568.

by the Supreme Court of the United States, and once by the Supreme Court of Connecticut.[111]

The first case cited, involved a judgment recovered in France by French citizens against American citizens who had been doing a mercantile business there. The second was an action by two parties plaintiff, one a citizen of Illinois, the other a citizen of Ontario, Canada, against a citizen of Ohio, upon a judgment recovered by the plaintiff against the defendant in the Queen's Bench Division of the High Court of Justice for the Province of Ontario. In both cases the merits of the original controversy were drawn in question by pleas, which were held good in the first instance and bad in the second.

These decisions introduce into our law of foreign judgments a new principle—the principle of reciprocity. The court did not content itself with sifting the American and English precedents and drawing its conclusions from them. The question involved was one, not of municipal, but of international, law, to be solved by the application of principles common to all civilized nations.

"International law in its widest and most comprehensive sense —including not only questions of right between nations, governed by what has been appropriately called the law of nations; but also questions arising under what is usually called private international law, or the conflict of laws, and concerning the rights of persons within the territory and dominion of one nation, by reason of acts, private or public, done within the dominion of another nation—is part of our law, and must be ascertained and administered by the courts of justice as often as such questions are presented in litigation between man and man, duly submitted to their determination. The most certain guide no doubt, for the decision of such questions is a treaty or a statute of this country. But when, as in the case here, there is no written law upon the subject, the duty still rests upon the judicial tribunal of ascertaining and declaring what the law is, wherever it becomes necessary to do so in order to determine the rights of parties to suits regularly brought before them. In doing this, the courts must obtain such aid as they can from judicial decisions, from the works of jurists and commentators, and from the acts and usages of civilized nations."

After an exhaustive examination of all the English and American authorities and of the doctrines adhered to in foreign countries, the court came to the conclusion:

[111] Hilton *v.* Guyot, 159 U. S. 113; Ritchie *v.* McMullen, Id. 235; Fisher *v.* Fielding, 67 Conn. 91.

"That there is hardly a civilized nation on either continent, which, by its general law, allows conclusive effect to an executory foreign judgment for the recovery of money. In France, and in a few smaller states—Norway, Portugal, Greece, Monaco and Hayti—the merits of the controversy are reviewed as of course, allowing to the foreign judgment, at the most, no more effect than of being *prima facie* evidence of the claim. In the great majority of countries on the continent of Europe—in Belgium, Holland, Denmark, Sweden, Germany, in many Cantons of Switzerland, in Russia and Poland, in Roumania, in Austria and Hungary, (perhaps in Italy), and in Spain—as well as in Egypt, in Mexico, and in a great part of South America, the judgment rendered in a foreign country is allowed the same effect only as the courts of that country allow to the judgments of the country in which the judgment in question is sought to be executed.

"The reasonable, if not the necessary, conclusion appears to us to be that judgments rendered in France, or in any other foreign country by the laws of which our own judgments are reviewable upon the merits, are not entitled to full credit and conclusive effect when sued upon in this country, but are *prima facie* evidence only of the justice of the plaintiff's claim. In holding such a judgment, for want of reciprocity, not to be conclusive evidence of the merits of the claim, we do not proceed upon any theory of retaliation upon one person by reason of injustice done to another, but upon the broad ground that international law is founded upon mutuality and reciprocity, and that by the principles of international law recognized in most civilized nations, and by the comity of our own country, which it is our judicial duty to know and to declare, the judgment is not entitled to be considered conclusive. * * * By our law, at the time of the adoption of the Constitution, a foreign judgment was considered as *prima facie* evidence, and not conclusive. There is no statute of the United States, and no treaty of the United States with France, or with any other nation, which has changed that law, or has made any provision upon the subject. It is not to be supposed that, if any treaty or statute had been or should be made, it would recognize as conclusive the judgments of any country which did not give like effect to our own judgments. In the absence of statute or treaty it appears to us equally unwarrantable to assume that the comity of the United States requires anything more."[113]

[113] Hilton *v.* Guyot, 159 U. S. 113.

This, then, is the doctrine of the Supreme Court of the United States, and may perhaps be now regarded as the doctrine of our country. It is the very reasonable rule, proposed by Mr. Justice Story, years ago, in his "Conflict of Laws," as likely, "hereafter to work itself firmly into the structure of international jurisprudence,"[113] and it may almost be assumed that it will henceforth, as cases arise, receive the approval of many of our State courts.[114] The fact is not to be overlooked, however, that the decision in Hilton *v.* Guyot was only reached by a majority of one. Mr. Chief-Justice Fuller delivered a very strong dissenting opinion, and Justices Harlan, Brewer and Jackson concurred in this dissent. It is conceived to be not impossible that any two men of equal understanding might well be led to take different sides on the question. In England the credit given to foreign judgments does not rest on comity, but on *obligation.*

"Where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced."[115]

These often quoted words of Baron Parke have been disparaged as being an outgrowth of the now exploded "Social Contract" theory, and it has been said that they referred, when spoken, only to matter of technical pleading;[116] but they have repeatedly been reasserted and approved, and are now firmly engrafted upon the English law as expressing the very foundation upon which the validity of foreign judgments is based.[117] It is admitted in Hilton *v.* Guyot that a personal judgment "be-

---

[113] Story Conf. of Laws, Sec. 618.

[114] The case of Fisher *v.* Fielding, involving as it did, an English judgment (like Ritchie *v.* McMullen, 159 U. S. 235), did not require any decision of this kind. If the court were careful in abstaining from any criticism of the doctrine of Hilton *v.* Guyot, they were equally careful to avoid expressing their approval of it. "The effect to be given to a foreign judgment *in personam*, for a money demand, must be determined either by the comity of nations, the rule of absolute reciprocity, or the personal obligation resting on defendant. Whichever test may be adopted, the result will be the same, when a question arises between the courts of England and those of an American State which was once an English colony."

[115] Williams *v.* Jones, 13 Mees. & W. 628, 633.

[116] Hilton *v.* Guyot, 159 U. S. 113, and argument for appellant.

[117] See Godard *v.* Gray, L. R., 6 Q. B. 139, 148.

tween two citizens or residents of the country, and thereby subject to the jurisdiction in which it is rendered, may be held conclusive as between them everywhere. So, if a foreigner invokes the jurisdiction by bringing an action against the citizen, both may be held by a judgment in favor of either. And if a citizen sues a foreigner, and judgment is rendered in favor of the latter, both may be held equally bound."[118] It is only in the case of a judgment "purely executory, rendered in favor of a citizen or resident of the country, in a suit there brought by him against a foreigner" that the principle of reciprocity is to be invoked. Now, assuming that it is the province of courts to do justice between individuals, (having always due regard for local policy), and not to manœuvre governmental affairs, might not this rule of reciprocity defeat the very end for which they exist? Because the courts of another nation refuse to do justice, is that a good and sufficient reason why our courts should follow in their lead? It is the glory of our common law that it recognizes no distinction between the suitors that stand before its altar, but, be they citizens or be they strangers, metes out justice with an even hand. "With us, the law of the land protects all who stand upon it, and whenever a right has been violated, gives a remedy, without regard to the nationality of the offender."[119] "The common law recognizes no distinction whatever as to the effect of foreign judgments, whether they are between citizens, or between foreigners, or between citizens and foreigners. In all cases, they are deemed of equal obligation whoever are the parties."[120]

And if it be contended that the principle of reciprocity is an expedient one to adopt in order to induce such countries as France to change their attitude towards our own judgments, it may not be impertinent to quote the words of Chief-Justice Fuller:

"I cannot yield my assent to the proposition that because by legislation and judicial decision in France that effect is not there given to judgments recovered in this country which, according to our jurisprudence, we think should be given to judgments wherever recovered (subject, of course, to the recognized exceptions); therefore we should pursue the same line of conduct as respects the judgments of French tribunals. The application of the doctrine of *res judicata* does not rest in discretion, and it is

[118] Hilton *v.* Guyot, *supra.*

[119] Fisher *v.* Fielding, 67 Conn. 91.

[120] Story on Conf. of Laws, Sec. 610.

for the government, and not for its courts, to adopt the principle of retortion, if deemed under any circumstances desirable or necessary.''[121]

And again, of Chief-Justice Taney:

"It is truly said in Story's 'Conflict of Laws,' that, 'In the silence of any positive rule, affirming or denying or restraining the operation of foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests. It is not the comity of the court, but the comity of the nation, which is administered and ascertained in the same way, and guided by the same reasoning by which all other principles of municipal law are ascertained and guided.' ''[122]

It seems not unreasonable to believe that, apart from any "Social Contract" idea, a judgment rendered in a foreign country, after a fair trial according with civilized notions of procedure, does raise an obligation. The maxim, *Judicium redditur in invitum*, is true enough. But all obligations, even express contracts, are enforced *in invitum*, otherwise the intervention of a law suit would be a wholly useless proceeding. Assuredly, when a man enters into business in a foreign land, or even when he resides there for a time, as a sojourner, under the protection of its laws, he impliedly agrees to abide the issue of any litigation into which he may be called, and wherein all things are conducted in conformity with the recognized principles of natural justice. *A fortiori* is this true of one who enters into contractual obligations there, into the very structure of which the *lex loci* must be interwoven. What ground, then, is there for this discrimination, in regard to their legal obligation, between contracts made abroad, and the judgments that may be pronounced upon them?

"In any aspect, it is difficult to see why rights acquired under foreign judgments do not belong to the category of private rights acquired under foreign law. Now, the rule is universal in this country that private rights acquired under the laws of foreign States will be respected and enforced in our courts unless contrary to the policy or prejudicial to the interests of the State where this is sought to be done, and, although the source of this rule may have been the comity characterizing the intercourse between nations, it prevails to-day by its own strength, and the

---

[121] Hilton *v.* Guyot, 159 U. S. 113, 229; dissenting opinion.

[122] Bank of Augusta *v.* Earle, 13 Pet. 519, 589.

right to the application of the law to which the particular transaction is subject is a juridical right."[123]

Foreign laws are generally said to receive recognition only through comity—a term which seems often to signify little more than courtesy to other sovereignties springing from national selfishness. Let it be granted that the State, owing to the infirmities of human nature, must, in its international relations, of necessity be self-regarding; still, in the transactions of individuals, this necessity does not always exist. There is another and a higher view which says that the laws of foreign countries not repugnant to our local policy are recognized in our courts, because, without such recognition, justice between man and man could not be done.[124] The Supreme Court itself must have seen an obligation to obey a foreign judgment, else how could it have consented to confide the sacred rights of American citizens to the rule of absolute reciprocity, which applies as well to despotic military Russia, as to enlightened Great Britain.

On the whole, it appears that the doctrine of England stands upon far loftier principles than the doctrine of the United States. Which of the two will prove superior in practical operation is another question.

There is a further argument for the conclusiveness of foreign judgments, which is based upon the maxims, *Nemo debet bis vexari pro una et eadam causa*, and *Interest reipublicæ ut sit finis litium.* Not only would it be unjust to individuals to permit the reopening of a controversy once fairly tried and settled, after the original evidence may have become unattainable or lost, but the public welfare itself imperatively demands that there shall be some limit set to litigation. A contrary doctrine would injuriously affect the stability of private rights, greatly to the detriment of commercial and business relations, and entail a needlessly heavy burden upon the finances of the commonwealth.

In closing this discussion we cannot do better than quote again from the decision in the case of Fisher *v.* Fielding, so often cited before:

"The maxim, *Interest reipublicæ ut sit finis litium*, is not restricted in its application to controversies or suits originating in the State before whose courts it is invoked. It does not rest on the excellence of any particular system of jurisprudence. It governs wherever the parties come, in the last resort, before a

---

[123] Chief Justice Fuller in Hilton *v.* Guyot, 159 U. S. 113, 229.

[124] See note concluding Ch. II. of Story Conf. of Laws (8th Ed.)

court constituted under an orderly establishment of legal procedure. No one who has been or could have been heard upon a disputed claim, in a cause to which he was duly made a party, pending before a competent judicial tribunal having jurisdiction over him, proceeding in due course of justice, and not misled by the fraud of the other party, should be allowed, after final judgment has been pronounced, to renew the contest in another country. The object of courts is hardly less to put an end to controversies than to decide them justly.''[125]

Ernest Knaebel.

---

[125] 67 Conn. 91.